TENGKU KORISH v. MOHAMED BIN JUSOH & ANOR.

ABDUL RAOUF v. IBRAHIM BIN ARSHAD & ANOR.

MOKHTAR BIN ABDULLAH v. MOKHTAR BIN HAJI DAUD & ANOR.

[O.C.J. (Raja Azlan Shah J.) July 4, 1969]

[Kuantan—Election Petition Nos. 1, 2 & 3 of 1969]

Election — Petitions — Presentation before date of publication of uncontested election results in Gazette — Non-compliance with statutory requirements — Election Offences Act, 1954 (Laws of Malaysia Act 5), ss. 34, 35 & 38(1).

In these cases an application was made to take the election petitions off the file on the ground that they were not presented within 21 days of the date of the publication of the result of the election in the *Gazette* as required by section 38(1) of the Election Offences Act, 1954.

The facts were as follows: The petitioners were candidates for the constituencies of Kuala Pahang, Pahang Tua and Rompin for election to the Pahang State Legislative Assembly. On April 5, 1969 they filed their nomination papers. These were rejected by the returning officer on certain grounds. The returning officer forthwith declared the first respondents to be elected and returned their names in the prescribed forms to the supervisor of elections who caused them to be published in the *Gazette* on May 8, 1969. The election petitions were presented on April 23, 1969.

Held: in view of the peremptory language of section 38(1) of the Act, the petitioners should have filed their petitions within 21 days after the date of publication of the election results in the *Gazette* and as the petitions in this case were filed before the publication of the results, they must be dismissed.

Cases referred to:—

(1) *Wolverhampton New Waterworks Company* v. Hawkesford 6 C.B. (N.S.) 336; 141 E.R. 486, 495.

(2) *Neville* v. *London Express Newspaper Ltd.* [1919] A.C. 368.

(3) *Attorney-General of Trinidad & Tobago* v. *Gordon Grant & Company* [1935] A.C. 532.

(4) *Theberge* v. *Laudry* (1876), 2 App. Cas. 102.

(5) *Goonesinha* v. *Hon. C.J. de Kretser* [1945] A.C. 63.

(6) *Arzu* v. *Arthur* [1965] W.L.R. 675.

(7) *Ponnuswami* v. *Returning Officer, Nammakkal Constituency & Ors.* [1952] S.C.R. 218.

(8) *Devan Nair* v. *Yong Kuan Teik* [1967] 1 M.L.J. 261.

(9) *Harcharan Singh* v. *Mohinder Singh* A.I.R. 1968 S.C. 1500.

(10) *Chong Thain Vun* v. *Watson & Anor.* [1968] 1 M.L.J. 65.

ELECTION PETITIONS.

Abdul Aziz bin Abdullah (*Wan Hashim* with him) for the 3 petitioners.

Dato' Eusoffe Abdoolcader (*Raja Abdul Aziz bin Raja Addruse* with him) for the 1st respondents.

Tan Sri Haji Abdul Kadir bin Yusof (Attorney-General) (*Anuar bin Zainal Abidin*, Legal Adviser, Pahang, with him) for the 2nd respondents.

Raja Azlan Shah J. (delivering oral judgment): This is an application to take the election petitions off the file, on the ground that it was not presented within twenty-one days of the date of publication of the result of the election in the *Gazette* as required by section 38(1) of the Election Offences Act, 1954.

The facts are as follows: The 3 petitioners were candidates for the Constituencies of Kuala Pahang, Pahang Tua and Rompin for election to the Pahang State Legislative Assembly. On 5th April 1969 they filed their nomination papers. These were rejected by the returning officer on certain grounds which need not be set out at this stage. The returning officer forthwith declared the first respondents to be elected and returned their names in the prescribed forms (i.e., Form 5 in the First Schedule to the Elections (Conduct of Elections) Regulations, 1959) to the Supervisor of Elections who caused them to be published in the *Gazette* on 8th May 1969. The election petitions were presented on 23rd April 1969, that is to say before the date of publication of uncontested election results in the *Gazette*.

The question which I have to determine is whether the petitions must be presented after the date of publication of the result in the *Gazette* before. In order to determine this question I have to put a construction upon the provisions of section 38(1) of the Election Offences Act, 1954 and regulation 10 of the Elections (Conduct of Elections) Regulations, 1959. Section 38(1) enacts that:—

> "Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the *Gazette*".

Then regulation 10 provides:—

> "If on the day of nomination in any constituency, after determination by the returning officer of any objections which may have been lodged, only one candidate stands nominated for that constituency, the returning officer shall forthwith declare the nominated candidate to be elected, and shall forthwith make a return as set out in Form 5 in the First Schedule to these Regulations to the Supervisor of Elections who shall cause the name of the member so elected to be published in the *Gazette*."

It is well recognised that I must not go outside the province of the election law. The Election Offences Act, 1954 confers certain rights and provides a remedy for enforcing those rights. Where that is the case, the remedy provided by that statute only must be availed of. Wills J. stated this rule with great clarity in *Wolverhampton New Waterworks*

Company v. Hawkesford[1] in the following passage:—

"There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, *viz.*, where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it . . . . The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The present cases falls within the latter class.

The rule cited in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.*[2] and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad and Tobago v. Gordon Grant & Company.*[3]

What "right" does the Election Offences Act, 1954 confer, using the word "right" in its broad sense? In my judgment, the right conferred by that Act is a special kind of right unknown to the common law or equity, and the court which administers it possesses a special kind of jurisdiction (see *Theberge v. Laudry,*[4] *Goonesinha v. Hon. C.I. de Kretser*[5] or what is said in *Arzu v. Arthur*[6] as a peculiar jurisdiction). It is not a civil right but a creature of statute or special law and must be subject to the limitations imposed by it (see *Ponnuswami v. Returning Officer, Nammakkal Constituency & Ors.*).[7]

The statutory requirements of election law are mandatory and must be strictly observed: see *Devan Nair v. Yong Kuan Teik,*[8] *Harcharan Singh v. Mohinder Singh*[9] and *Chong Thain Vun v. Watson & Anor.*[10]

It is now necessary to put a construction upon the provisions of section 38(1) of the Election Offences Act, 1954 and regulation 10 of the Elections (Conduct of Elections) Regulations, 1959. Regulation 10 enacts that after determination by the returning officer of any objections which may have been lodged, only one candidate stands nominated, he shall forthwith declare him to be elected and shall forthwith make a return in the prescribed form to the Supervisor of Elections, who in turn shall cause the same to be gazetted. It cannot be said that the return of the successful candidate is made as soon as the returning officer declares him to be elected or signs the prescribed form. It seems to me that the true meaning of the regulation is that the return is made when the returning officer sends the prescribed form to the Supervisor of Elections who on receipt of it acts upon it in the sense required by the regulation. Now, what has the Supervisor of Elections to do upon a return being made to him? He has to gazette the name. In this sense a return is only complete when it reaches the hands of the Supervisor of Elections, so that he can act upon it as is required by law. Now, section 38(1) uses peremptory language and provides a remedy which must be taken to mean what it says, that no court of law is to recognise a petitioner having a right of law until after the date of publication of the election result in the *Gazette*. The word "of" in this context is no different from the word "after".

For these reasons the petitioners, under the compulsion of the Act, must present their petitions twenty-one days 'after' the date of publication of the election result in the *Gazette*. Petition Nos. 1, 2 & 3 of 1969 are dismissed with separate costs to the first respondents on the higher scale. Moneys deposited by way of security may be applied towards payment of taxed costs.

Order accordingly.

Petitions dismissed.

Solicitors: *Abdul Aziz Abdullah & Co.; Rithauddeen & Aziz.*

LEE AH LOW v. CHEONG LEP KEEN & ANOR.

[F.C. (Ong Hock Thye C.J. (Malaya), Suffian and Ali F.JJ.) July 26, 1969]

[Kuala Lumpur—Federal Court Civil Appeal No. X.64 of 1968]

Landlord and Tenant — Lease for 80 years not registered — Effect of tenant entering into possession — Payment of monthly rent — Notice to quit.

In this case certain premises in Malacca had been let by one Toh Kim Soon to the appellant for a term of 80 years on a monthly rent of $100. The agreement was not by deed nor was it registered. The appellant went into occupation and paid the monthly rent. Subsequently the land was sold to the respondents, who then gave a notice to quit to the appellant terminating "his monthly tenancy on April 30, 1969 or at the end of the period of the tenancy expiring next." The learned trial judge held that the appellant held the land under a tenancy and that this tenancy had been effectively put an end to by the notice to quit. On appeal,

Held (Ong Hock Thye C.J. dissenting): (1) the written instrument in this case was void as a lease;

(2) the learned trial judge was correct in holding that on the proper construction of the tenancy agreement